

**INTERLOCAL AGREEMENT BETWEEN
THE CITY OF COLLEGE STATION AND THE CITY OF BRYAN, TEXAS
FOR EACH CITY TO ASSIST THE OTHER WITH
EMERGENCY WATER TRANSFER**

This Agreement is made and entered into this 9th day of January, 2000 by and between the City of Bryan (hereinafter referred to as "BRYAN") and the City of College Station, a Texas Home Rule Municipal Corporation (hereinafter referred to as "COLLEGE STATION") each acting herein by and through its duly authorized official.

WHEREAS, Chapter 791 of the Texas Government Code also known as the Interlocal Cooperation Act authorizes all local governments to contract with each other to perform functions or services that each party to the contract is authorized to perform individually; and

WHEREAS, BRYAN and COLLEGE STATION are engaged in cooperative and mutually beneficial discussion in a number of areas and desire to expand areas of cooperation; and

WHEREAS, each party generally has an adequate supply of water to assist the other party in a site-specific situations ; and

WHEREAS, water system interconnect improvements are proposed between BRYAN and COLLEGE STATION in those locations as may be established from time to time by the City Managers of both cities for the purpose of providing automatic and immediate supplemental water flow to assist either City when appropriate conditions exist; and

WHEREAS, BRYAN and COLLEGE STATION, pursuant to the provisions of the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, as amended, have determined that to further continuing efforts on joint cooperative projects between the parties it would be in the best interests of BRYAN and COLLEGE STATION to enter into this agreement specifying the terms and conditions under which either City will supply the other with supplemental water transfer to satisfy emergency conditions through the Tarrow Drive interconnect, the proposed College Main Street interconnection and other possible future interconnects.

NOW THEREFORE, for and in consideration of mutual benefits to be derived by each of the parties hereto, said parties agree and covenant as follows:

ARTICLE I DEFINITIONS

1.1 For the purposes of this Agreement, when not inconsistent with the context, words, used in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural, and the use of any gender shall be applicable to all genders whenever the sense requires. The words "shall" and "will" are mandatory and the word "may" is permissive. Words not defined in this Agreement shall be given their common and ordinary meaning.

1.2 For the purposes of this Agreement, the following words, terms, phrases and their derivatives shall have the meaning given in this Section.

1.2.1 **Emergency conditions** for the purpose of this document means any situation where the municipal water system of either city cannot maintain minimum water system pressure during periods of high system demands, typically, but not necessarily associated with water flow requirements necessary to provide fire protection as prescribed in the applicable section(s) of the Insurance Service Office (ISO) standards.

1.2.2 **COLLEGE STATION** means the City of COLLEGE STATION, Texas, a home rule municipal corporation in the County of Brazos, State of Texas.

1.2.3 **BRYAN** means the City of BRYAN, Texas, a home rule municipal corporation in the County of Brazos, State of Texas.

1.2.4 **Municipal water system** means a water utility system owned, operated, and controlled by a municipality and a public water system as defined by the Texas Natural Resource Conservation Commission (hereinafter referred to as "TNRCC"), providing water or sewer service, or both, under the authority of §13 of the TEXAS WATER CODE, as amended.

1.2.5 **Interconnect** means a system of pipes, valves, meters, controls, with or without electric motors and pumps allowing water to flow by system pressure differential or through a pumping facility from the BRYAN water system into the COLLEGE STATION water system, or from the COLLEGE STATION water system into the BRYAN water system.

1.2.6 **Unit rate** means the cost for each one thousand (1,000) gallons of water supplied.

1.2.7 **Renewal date** means the termination date of the date this agreement.

ARTICLE II EMERGENCY WATER TRANSFER

2.1 When appropriate conditions exist in either City, in the general area of the Interconnect(s), each City agrees to provide available water to the other City through the automatic Interconnect

2.2 During emergency conditions, water will be transferred from either City to the other through the Interconnect and will discontinue the transfer of water when emergency conditions cease to exist.

ARTICLE III UNIT RATE PRICE

3.1 The cost per one thousand (1,000) gallons of water so transferred through the Interconnect will be *One Dollar and Forty-six Cents (\$1.46)*.

3.2 The unit rate for water may be renegotiated by mutual agreement of both parties, upon thirty (30) days prior notification.

3.3 The parties agree that the unit rate will be the same regardless of which party provides or receives the water.

3.4 Payments under this agreement will be made from current revenues available to the paying party. Either party may waive usage fees due them.

ARTICLE IV TRANSFER INITIATION AND TERMINATION

4.1 The parties agree that emergency flow water transfer can be initiated without the notification or consent of the other party. Contact will however, be made as soon as reasonably possible. The BRYAN contact will be the Municipal Service Center during the day, telephone (979) 209-5900 or the Bryan Water Production Facility during the evening, telephone (979) 209-5671. The COLLEGE STATION contact will be the Utility Dispatch, telephone (979) 764-3638.

4.2 The parties agree that the termination of water transfer during emergency fire flow conditions will only occur after consultation between members of both Fire Departments. Members designated to order the termination of transfer during fire flow conditions shall be: Fire Chiefs, Assistant Fire Chiefs, Fire Marshals or Shift Commanders of the Bryan and College Station Fire Departments in the aforesated order of precedence. The decision to terminate the transfer of water during emergency conditions will take into consideration the following items listed in the enumerated order of importance.

1. Protection of Life
2. Protection of Exposed Property
3. Protection of Buildings
4. Interruption of water Service.

4.3 The parties agree that the party receiving emergency water will use its best efforts to resolve the emergency situation as soon as possible.

4.4 The parties agree to jointly calculate the water flow at the conclusion of every transfer of water.

ARTICLE V MAINTENANCE, TESTING AND OPERATION

5.1 The City in which the interconnect is located will be responsible for the maintenance, testing and operation of the Interconnect. The city responsible for maintenance, testing and operation will advise the other city whenever it is working on, or operating the Interconnect system prior to such activity.

5.2 Each city will share equally in the cost of maintenance, testing and operation for all interconnects. On a semi-annual basis, once in December and once in June of each year, each city will calculate the cost of the maintenance, testing and operation for all interconnect(s) located within their jurisdiction and generate an itemized report which will be forwarded to the other city for these expenses. The costs for each city shall be aggregated and multiplied by 1/2 to obtain a total cost after which the cities shall reconcile the payment due or credit owed.

5.3 Upon the execution of this Agreement the Division Manager in charge of the water utility will for each city will establish a mutually agreeable schedule for maintenance and testing which may be amended as necessary from time to time upon mutual agreement of both Division Managers.

ARTICLE VI INTERCONNECT LOCATION(S)

6.1 The water system interconnect(s) subject to this Agreement are an existing interconnect located in College Station at the approximate city limits on Tarrow Drive and a proposed interconnect in College Station located at the approximate city limits on College Main Street. Additional locations may be added or deleted by mutual agreement of the City Manager for each City in writing. The terms and conditions of this Agreement shall apply to all interconnects so added.

ARTICLE VII TERM OF AGREEMENT

7.1 COLLEGE STATION shall exercise due diligence to complete the construction of the West Side Utilities Water Line Project, currently in the City's approved FY00-01 budget in the 18 month project schedule. Should COLLEGE STATION fail to complete the West Side Water Line project in the time required, within 18 months of the effective date of this agreement, the City of COLLEGE STATION shall pay the City of BRYAN as follows:

\$ 250.00 per month each month after 18 months
\$1,000.00 per month each month after 24 months
\$3,000.00 per month each month after 30 months
\$5,000.00 per month each month after 36 months until the
project is completed, accepted and placed in full
operation.

BRYAN agrees to waive this fee if the cause of any delay is beyond the direct control of COLLEGE STATION.

To the extent permitted by law and without waiving each respective party's governmental immunity or the limitations as to damages contained in the Texas Tort Claims Act, College Station and Bryan agree to hold each other harmless from and against any and all claims or causes of action arising out of or in connection with the provision of water.

ARTICLE VIII GENERAL PROVISIONS

8.1 Except as otherwise provided herein, the terms and conditions of this agreement may be modified at any time by the mutual consent of both parties. Mutual consent will be demonstrated by the signatures of both the Mayor of the City of BRYAN and the Mayor of the City of COLLEGE STATION.

8.2 Written notice shall be deemed to have been duly served if delivered in person to the individual listed below or if it is delivered or sent certified mail to the business address as listed below. Each party has the right to change its business address by giving at least thirty (30) days advance written notice of the change to other party in writing.

BRYAN: City of Bryan
Attn: City Manager
300 South Texas Avenue
Bryan, Texas 77801

COLLEGE STATION: City of College Station
Attn: City Manager
1101 Texas Avenue
College Station, Texas 77840

8.3 It is understood and agreed that this agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

8.4 This Agreement has been made under and shall be governed by the laws of the State of Texas. The parties agree that performance and all matters related thereto shall be in Brazos County, Texas.

8.5 Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in anyway affect the validity of this Agreement, any part hereof, or the right of either party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

8.6 This Agreement and all rights and obligations contained herein may not be assigned without the prior written approval of the other party.

8.7 If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court of competent jurisdiction finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it may become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

8.8 This Agreement represents the entire and integrated agreement between COLLEGE STATION and BRYAN and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may only be amended by written instrument approved and executed by the parties.

8.9 The parties acknowledge that they have read, understand and intend to be bound by the terms and conditions of this Agreement.

8.10 This Agreement becomes effective when signed by the last party whose signing makes the agreement fully executed and will remain in full force and effect until terminated or modified as hereinafter provided.

EXECUTED on this 9th day of January, 2001.

CITY OF BRYAN

BY: 

LONNIE STABLER, Mayor

Date: 1-9-01

CITY OF COLLEGE STATION

BY: 

LYNN McILHANEY, Mayor

Date: 4/12/01

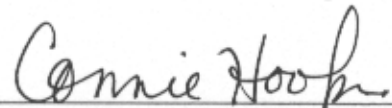
ATTEST:



Mary Lynn Stratta, City Secretary

Date: 1-9-01

ATTEST:



Connie Hooks, City Secretary

Date: 4/16/01

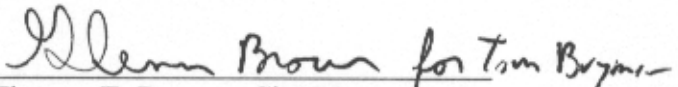
APPROVED:



Sen Michael A. Conduff, City Manager

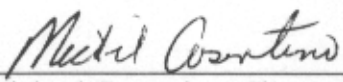
Date: 1-10-01

APPROVED:



Thomas E. Brymer, City Manager

Date: _____



Michael Cosentino, City Attorney

Date: 01-09-01



Harvey Cargill, Jr., City Attorney

Date: _____



Charles Cryan, Director of Fiscal Services

Date: 04-12-01